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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,205	03/25/2005	Lior Khernmash	2823-31	2020
7590 Mark M Friedman c/o Polkinhorn 9003 Florin Way Upper Marlboro, MD 20772				
EXAMINER				
TRAN, DZUNG D				
ART UNIT		PAPER NUMBER		
2613				
MAIL DATE		DELIVERY MODE		
06/27/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/529,205

**Applicant(s)**

KHERMOSH, LIOR

**Examiner**

Dzung D. Tran

**Art Unit**

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Brissette et al. US 7,062,165.

Regarding claim 1, Brissette discloses in Figure 1, a method of initiating forward error correction in an ethernet passive optical network including at least one optical network unit, comprising the steps of:

- (a) upon receiving forward error corrected data from the at least one optical network unit, responding thereafter with forward error corrected data (col. 2, lines 29-43, i.e., a performance monitor 108 for receiving data signal based on forward error corrected data to determined the corrected or un-corrected binary data signal); and
- (b) upon receiving data not forward error corrected from the at least one optical network unit, responding thereafter with data not forward error corrected data (col. 2, lines 29-

43, i.e., a performance monitor 108 for receiving data signal based on forward error corrected data to determined the corrected or un-corrected binary data signal).

Regarding claim 2, Brissette discloses in Figure 1, A method of initiating forward error correction in an ethernet passive optical network including an optical line terminal, comprising the steps of:

- (a) upon receiving forward error corrected data from the optical line terminal, responding thereafter with forward error corrected data (col. 2, lines 29-43, i.e., a performance monitor 108 for receiving data signal based on forward error corrected data to determined the corrected or un-corrected binary data signal); and
- (b) upon receiving data not forward error corrected from the optical line terminal, responding thereafter with data not forward error corrected (col. 2, lines 29-43, i.e., a performance monitor 108 for receiving data signal based on forward error corrected data to determined the corrected or un-corrected binary data signal).

Regarding claims 3 and 5, Brissette discloses in Figure 1, a method of initiating forward error correction and managing forward error correction in an ethernet passive optical network including at least one optical network unit, comprising the steps of:

- (a) a performance monitor 108 for monitoring communications quality from the at least one optical network unit, thereby determining a figure of merit of said communications;
- (b) upon finding said figure of merit to be insufficient, transmitting thereafter forward error corrected data to the at least one optical network unit (col. 2, lines 29-43); and
- (c) upon finding said figure of merit to be sufficient, transmitting thereafter data not

forward error corrected data to the at least one optical network unit (col. 2, lines 29-43).

Regarding claims 4 and 6, Brissette discloses wherein said figure of merit is selected from the group consisting of: (i) bit error rate, (ii) parity violation rate, (iii) 8B/10B coding violation rate; and (iv) frame error rate (col. 2, lines 29-43; col. 3, lines 40-61; col. 4, lines 56-65).

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-2 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 03/31/2008 have been fully considered but they are not persuasive.

**A) Rejection claims 3-6 are rejected under 35 U.S.C. 35 U.S.C. 102(e) as being anticipated by Brissette et al. US 7,062,165.**

Applicant argues that Examiner admits that Brissette has nothing to do whatsoever with transmitting FEC corrected data or non-FEC corrected data to an ONU. Examiner respectfully disagreed, as the rejection of claim 3 above, col. 2, lines 29-43 of Brissette clearly discloses a performance monitor 108 for monitoring communications quality from the at least one optical network unit, thereby determining a figure of merit of said communications;

(b) upon finding said figure of merit to be insufficient, transmitting thereafter forward error corrected data to the at least one optical network unit (col. 2, lines 29-43); and

(c) upon finding said figure of merit to be sufficient, transmitting thereafter data not forward error corrected data to the at least one optical network unit (col. 2, lines 29-43).

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dzung D Tran whose telephone number is (571) 272-3025. The examiner can normally be reached on 9:00 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzung Tran

Art Unit: 2613

06/22/2008

/Dzung D Tran/

Primary Examiner, Art Unit 2613